

APPEAL NO. 021411
FILED JULY 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 9, 2002. The hearing officer resolved the disputed issues by concluding that the compensable injury of _____, does not extend to include the appellant's (claimant) disc herniation at L4-5 and that the claimant is not entitled to supplemental income benefits (SIBs) for the 14th, 15th, 16th, 17th, and 18th quarters. The claimant appeals, arguing that the hearing officer erred in determining the SIBs and extent-of-injury issues. The appeals file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

In his appeal, the claimant states he disagrees with three of the issues he stipulated at the CCH. Section 410.166 provides that a written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(b) (Rule 147.4(b)).

Section 408.142(a) and Rule 130.102 set out the statutory and regulatory requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) through a total inability to work as set out in Rule 130.102(d)(4) during the qualifying periods, which were from October 4, 2000, through January 1, 2002. The claimant claimed he had no ability to work during the qualifying periods. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that the claimant did not provide a narrative from a doctor which specifically explained how the claimant's injury caused a total inability to work. In addition, the hearing officer found that the claimant possessed a sedentary ability to work during the qualifying periods of the 14th, 15th, and 16th SIBs quarters. Further, although the hearing officer found that the claimant had an inability to work during the qualifying periods for the 17th and 18th SIBs quarters, she additionally found that this inability was not the direct result of the impairment from the compensable injury.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer

determined that the claimant did not attempt in good faith to obtain employment commensurate with the claimant's ability to work and consequently concluded that the claimant is not entitled to SIBs for the 14th, 15th, 16th, 17th, and 18th quarters. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Extent of injury is also a factual question for the hearing officer to resolve. The hearing officer determined that the claimant's compensable injury of _____, does not extend to include the claimant's disc herniation at L4-5. Conflicting evidence was presented on this issue. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them so in this case. Cain; In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Roy L. Warren
Appeals Judge